



# HOUSE BILL 1766: Amend Environmental Laws 2010

2009-2010 General Assembly

**Committee:** Senate Floor  
**Introduced by:** Rep. Gibson  
**Analysis of:** Ratified

**Date:** July 14, 2010  
**Prepared by:** Jennifer Mundt  
Legislative Analyst

**SUMMARY:** *House Bill 1766 amends certain environmental and natural resources laws.*

[As introduced, this bill was identical to S1167, as introduced by Sen. Clodfelter, which is currently in Senate Agriculture/Environment/Natural Resources.]

**BILL ANALYSIS:** House Bill 1766 would amend certain environmental and natural resources laws as follows:

**Section 1** would change the location of the horizontal control monument files for plat and subdivision mapping requirements from the North Carolina Office of Budget and Management to the North Carolina Geodetic Survey Section of the Division of Land Resources of the Department of Environment and Natural Resources (DENR).

**Section 2** would provide that the President Pro Tempore and the Speaker may designate multiple members to serve as Cochairs of the Environmental Review Commission. Existing law provides that the Pro Tempore and Speaker may only designate one member, respectively, to serve as Cochair.

**Section 3** would repeal the requirement that remedial action plans for inactive hazardous substance or waste disposal sites be recorded in the register of deeds office in the county or counties in which the site is located. This Section would also modify the requirement that remedial action plans be placed in each library in the county or counties in which the site is located and instead require the plans to be placed only in the library in the county that is in closest proximity to the site.

**Section 4** would reestablish the Surface Water Identification and Training Certification Program under the Riparian Buffer Protection Program. This training and certification program was first established in 2001 and expired in 2004; however, the Division of Water Quality (DWQ) in DENR has continued to offer the training since 2004. DWQ's program trains and certifies DWQ employees, local government employees, and Registered Foresters employed by the Division of Forest Resources to determine the presence of surface waters that require application of the Environmental Management Commission's Riparian Buffer Protection Rules. DWQ would be required to report annually to the Environmental Review Commission (ERC) on the effectiveness of the program and any findings and recommendations beginning on October 1, 2011.

**Section 5** would amend the requirement for owners or operators of any permitted wastewater collection or treatment works to provide an annual report to users or customers of the system such that the reporting requirement would only apply to those permitted systems that have an average annual flow of greater than 200,000 gallons per day.

**Section 6** would amend the maximum civil penalty that may be assessed by local air programs for air quality violations from \$10,000 per day to \$25,000 per day to conform to similar changes in enforcement and civil procedures for air quality violations that were enacted during the 2007 Session. Three counties (Buncombe, Forsyth, and Mecklenburg) have established local air programs. Section 6 would become effective October 1, 2010.

# House Bill 1766

Page 2

**Section 7** would change the name of the North Carolina National Park, Parkway and Forests Development Council to the Western North Carolina Public Lands Council and makes clarifying, technical, and conforming changes to those affected statutes.

**Section 8** would clarify the standards for qualification of voluntary water conservation and water use efficiency programs established by trade or professional organizations representing commercial car washes. This section would provide that implementation of voluntary programs would be considered in determining compliance with a local government water shortage response plan such that an approved program achieves year-round reductions in water use and results in a reduction of 20% or more in average water use per vehicle.

**Section 9** would clarify the procedures that DENR must follow to enforce the provisions of the Drought Management Preparedness and Response Act enacted in 2008. Section 9 would become effective October 1, 2010.

**Section 10** would amend the membership of the Sedimentation Control Commission such that the member from a North Carolina public utility company would be a representative of a utility rather than stipulate the member be the president, vice-president, or general counsel of a utility.

**Section 11** would amend the notice requirements for cities, counties, sanitary districts, and water and sewer authorities when considering imposing or increasing fees or charges related to subdivision development. This section would require the entities to provide notice to interested parties of the imposition of or increase in fees at least seven days prior to the first meeting where the fee is on the agenda for consideration using two of the following means of communication:

- 1) Notice in a prominent location on a Web site managed or maintained by the entity.
- 2) Notice in a prominent physical location.
- 3) Notice by electronic mail to a list of interested parties.
- 4) Notice by facsimile to a list of interested parties.

In order to comply with the notice option provided in 1) above, cities, sanitary districts, and water and sewer authorities that do not manage or maintain their own website may submit a request to the county or counties in which they are located to post the notice on their behalf. Section 11 would become effective February 1, 2011.

**Section 12** would provide that the existing prohibition on any new or increased nutrient loading allocation applies only to impaired drinking water supply reservoirs.

**Section 13** would require the Departments of Administration, Agriculture and Consumer Services, Commerce, Crime Control and Public Safety, Environment and Natural Resources, Health and Human Services, Insurance, and Transportation to review their respective planning and regulatory programs to determine whether they currently consider the impacts of global climate change, including adaptation and sea level rise. The agencies would have to describe how any such program considers the impacts of global climate change and make recommendations for modification or expansion as determined by the agency. For programs that do not address global climate change, the agency must recommend if and how the program should consider global climate change. Each agency would be required to report the results of its review to DENR by September 1, 2011 after which time DENR would be required to compile those results and report them to the ERC and any future legislative commission that directly and primarily addresses global climate change on or before November 1, 2011.

**Section 14** would:

# House Bill 1766

Page 3

- Require all public agencies (State agencies, including the General Assembly, the General Court of Justice, universities, community colleges, public schools, and political subdivisions) using State funds for the construction or operation of public buildings to: (i) implement a program by July 1, 2011 for the collection and recycling of all spent fluorescent lights and thermostats that contain mercury generated in State offices owned by the respective entity; and (ii) report on their compliance with this requirement to DENR and the Department of Administration (DOA) on or before December 1, 2011. DENR and DOA would then compile the information submitted from all agencies and jointly submit a report to the ERC on or before January 15, 2012.
- Require a contractor responsible for building demolition or an owner of property to be demolished to remove all fluorescent lights and thermostats that contain mercury from the building prior to demolition.
- Prohibit the disposal of fluorescent lights and thermostats that contain mercury in a sanitary landfill for the disposal of construction and demolition debris, and other unlined landfills. This ban would become effective July 1, 2011. A knowing violation of this provision would be punishable as a Class 3<sup>1</sup> misdemeanor and would subject the violator to the imposition of administrative penalties as follows:
  - First violation – warning.
  - Second violation within any 12-month period – not more than \$200.00
  - Each additional violation within any 12-month period – \$500.00

**Under current law**, with regard to other recycling requirements applicable to State agencies, G.S.130A-309.14 requires all agencies to have a program to collect recyclable materials, specifically including aluminum, newspaper, sorted office paper, recyclable glass, and plastic bottles.

With regard to other items banned from disposal in landfills, these include: used oil; yard trash; white goods; antifreeze; aluminum cans; whole scrap tires; lead-acid batteries; beverage containers that are required to be recycled by ABC permittees; motor vehicle oil filters (effective October 1, 2009); wooden pallets, except that wooden pallets may be disposed of in a landfill that is permitted to only accept construction and demolition debris (effective October 1, 2009); oyster shells; discarded computer equipment (effective January 1, 2011); and discarded televisions (effective January 1, 2011).<sup>2</sup> Knowing violation of these provisions would subject the violator to the imposition of an administrative penalty of up to \$15,000 per day, and would be punishable as a Class 1 misdemeanor (note that accidental or occasional disposal of small amounts of prohibited solid waste by landfill or incineration are not to be construed as a violation under the statute).<sup>3,4</sup>

Section 14 would become effective July 1, 2011.

**Section 15** would authorize the ERC to study the penalties applicable to violations of G.S. 130A-309.10 (Prohibited acts related to packaging; coded labeling of plastic containers required; disposal of certain solid wastes in landfills or by incineration prohibited), and report findings and any legislative recommendations to the 2011 Regular Session of the 2011 General Assembly upon its convening.

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<sup>1</sup> The range of punishment for a Class 3 misdemeanor, assuming no prior convictions, is 1-10 days community punishment.

<sup>2</sup> These items are banned from disposal in *all landfills*. The disposal ban proposed under in the bill covering fluorescent lights and thermostats containing mercury would only be applicable to sanitary landfill for the disposal of construction and demolition debris, and other unlined landfills.

<sup>3</sup> See G.S. 130A-22 (Administrative Penalties) and G.S. 130A-25(a) (Misdemeanor)/GS 14-3(a) (Punishment of Misdemeanors...).

<sup>4</sup> The range of punishment for a Class 1 misdemeanor, assuming no prior convictions, is 1-45 days community punishment.

# House Bill 1766

Page 4

**Section 16** would clarify the statutory provision that all local government water systems and large community water systems require separate meters for new in-ground irrigation systems that are connected to their systems only applies to lots platted and recorded in the office of the register of deeds in the county or counties in which the real property is located after July 1, 2009.

**Section 17** would add a new section in Chapter 136 of the General Statutes (Roads and Highways) to prohibit the use of high content arsenic glass beads in paint that is used for pavement marking. This Section would become effective October 1, 2010 and would apply to any contracts for road projects entered into, or any pavement re-marking that takes place, on or after that date.

**Section 18** would add traditional country stores to those entities that are exempt from Part 6 of Article 8 of Chapter 130A of the General Statutes (Regulation of Food and Lodging Facilities, Sanitation). For the purposes of only this exemption, this section would define "traditional country store" to mean for-profit establishments that sell an assortment of goods, including prepackaged foods and beverages, and have been in continuous operation for at least 75 years

**Section 19** would delay the sunset date for current nutrient offset payments from September 1, 2010 to September 1, 2011 to provide additional time for rulemaking to develop a new payment schedule.

**Section 20** would make a technical amendment to Senate Bill 887 (Amend Electronics Recycling Law), if it becomes law, to clarify the power source features of the term "notebook computer." This Section would become effective August 1, 2010.

**Section 21.(a) and (b)** would limit the application of the Clean Coastal Water and Vessel Act enacted in 2009 to only those areas that are designated as no discharge zones (NDZs) by the USEPA after certain language made the Act's provisions applicable to vessels in coastal waters that are included in a petition to the USEPA to be designated as a NDZ was discovered to be potentially preempted by federal law. Section 312(f)(1)(A) of the Clean Water Act provides in part: "... no State or political subdivision thereof shall adopt or enforce any statute or regulation of such State or political subdivision with respect to the design, manufacture, or installation or use of any marine sanitation device on any vessel subject to the provisions of this section." This Section would delay the effective date of the Clean Coastal Water and Vessel Act from July 1, 2010 to April 1, 2011.

**Section 21.1** would amend Section 9.10.(a) of S.L. 2010-31 would provide for an interdisciplinary study of wave and physical processes in the oceans and associated water bodies that considers ecosystem functions and health of the ocean including carbon budget, acidification, mercury, and nutrient issues as a part of the coastal wave energy research and prototype project authorized by that Section.

**Section 21.2** would require the NC Sustainable Communities Task Force, as established by Section 13.5.(a) of S.L. 2010-31, to: (i) consider the resources and infrastructure in small communities and rural areas in order to ensure all communities and areas may compete for grants on an equal basis when developing the common local government sustainable practices scoring system; (ii) report to the House Commerce, Small Business, and Entrepreneurship Committee and Senate Commerce Committee regarding the sustainable practices scoring system; (iii) clarify that the Task Force has no authority to regulate or supersede any action of any State agency or local government.

**EFFECTIVE DATE:** Except as specifically noted in Sections 6, 9, 11, 14, 17, and 20 above, this bill would become effective when it becomes law.

*Jennifer McGinnis, counsel to the House Environment and Natural Resources Committee, contributed to this summary.*  
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